IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

OP.No. 1878 of 2002(W)

PETITIONER:

THE MANAGER,
KERALA AYURVEDA SAMAGAM HOSPITAL AND NURSING HOME,
SHORNUR, PALAKKAD.

BY ADV. SRI.M.P.ASHOK KUMAR

RESPONDENTS:

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1. INDUSTRIAL TRIBUNAL, PALAKKAD.

2. K.A.VISWAMBHARAN, ANIYATH VEEDU,
PARUTHIPARA, SHORNUR.

BY ADV. SRI.M.R.RAJENDRAN NAIR
SRI.R.SREERAJ
SRI.HARIRAJ
SRI.NIDHI BALACHANDRAN
GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/03/2007, ALONG WITH OP NO. 5238 OF 2002 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.3178/2002 IN OP. NO.1878/2002

DISMISSED

12.03.2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE AWARD PASSED BY THE INDUSTRIAL TRIBUNAL.

/TRUE COPY/

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S. SIRI JAGAN, J.

O.P.NO.1878 OF 2002

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O.P.No.5238 OF 2002

DATED THIS THE 12th DAY OF MARCH, 2007

JUDGMENT

The management and the workman in I.D.No.60/98 before the Industrial Tribunal, Palakkad, both are challenging the award of the Industrial Tribunal in that I.D. O.P.No.1878/02 is filed by the management and O.P.No.5238/02 is filed by the workman.

2. The issue referred for adjudication was "whether the denial of employment of Sri. K.A. Viswambharan - employee is justified. If not what relief he is entitled to."

3. The claim of the workman was that he had been working in the management establishment for seven years as a general worker and he was dismissed from service without assigning any reason or giving him any notice. The management contended that he was only a temporary seasonal employee engaged on daily wages for a few days during every year when there was additional work on account of the Onam season. According to the management such workmen have no right to claim future employment in the establishment.

4. The Tribunal found that every year the management is

employing additional employees for 2 to 3 months and relying on the evidence of MW1, the management witness, the Tribunal came to the finding that the workman was also being employed likewise. The Tribunal negatived the claim of the petitioner for continuance in regular employment, holding that as he never had 240 days of continuous service in any year, he is not entitled to the benefit of Section 25-F of the Act. But relying on the decision of the Hon'ble Supreme Court in **Central Bank of India Vs. S. Satyan (1996(2) LLJ 820)** the Tribunal came to the finding that in respect of such employees provisions of Section 25-G and Section 25-H are applicable. In the above circumstances, the Tribunal directed the management to continue to employ the workman from the next season onwards as earlier engaged and pay him back wages at the rate of Rs.2,000/- per year for the period he was denied employment.

5. This award is challenged by the management on the ground that the Tribunal had no power to direct such employment of the workman. The workman on the other hand challenged the award on the ground that the back wages should not have been restricted to Rs.2,000/- as was done by the Tribunal.

6. I have considered the rival contentions in detail. The management witness-MW1 deposed before the Tribunal that whenever there is need for increasing production of medicine, the

management used to appoint temporary workers. He admitted that during such time, the workman was also so employed. His evidence is to the further effect that after the additional need is over such temporary employees would be relieved and that every year they used to engage such temporary workers. He also deposed that whenever the vacancies of permanent workers arise these workers would be considered for permanent appointment. On the basis of evidence before it, the Tribunal came to the finding that the workman was in fact employed atleast for 2 to 3 months every year. When such employment extends to 2 to 3 months, it cannot be held that such an employment is of casual nature as is evidenced by the decision of a Division Bench of this Court in **Kochappan Vs. Krishnan (1987 (2) LLJ 174)** which decision holds that the employment would not be of casual nature when there was such regularity or periodicity of employment as to indicate that there was such a degree of mutuality in their obligations as to regard one as the employee and the other employer. The evidence in this case as noted above would certainly indicate such a mutuality between the management and the workman. Although in view of the fact that the workman did not have 240 days continuous service in an year, he may not be entitled to claim benefits under Section 25-F of the Act, certainly he would be entitled to the claim benefits of Section 25-G and Section 25-H of the Industrial Disputes Act as held by the

Hon'ble Supreme Court in **Central Bank of India Vs. S. Satyan (1996(2)LLJ 820)** which is relied on by the Tribunal. That being so, I do not find any perversity in the award of the tribunal directing that the workman should be employed as before during next season onwards.

7. Regarding the question of payment of back wages, I do not think that the Tribunal's direction needs interference at my hands. The Hon'ble Supreme Court has recently in several cases held that the Tribunal/Labour Court has discretion to restrict the payment of back wages in appropriate cases. That being so, I do not think that any interference is called for in respect of the direction to pay back wages at the rate of Rs.2,000/- per year.

In view of the above findings, I do not find any merits in these two original petitions and accordingly the same are dismissed.

S. SIRI JAGAN, JUDGE

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